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**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

Date: FEB 0 9 2012

Office: TEXAS SERVICE CENTER

File: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2).

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. On December 2, 2011, this office provided the petitioner with Notice of Derogatory Information and Request for Evidence (NDI) in the record and afforded the petitioner an opportunity to provide evidence that might overcome this information.

The petitioner is a delivery and courier service company. It seeks to employ the beneficiary permanently in the United States as a financial controller pursuant to sections 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary had the qualifications required by the terms of the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

On December 2, 2011, this office notified the petitioner that a discrepancy exists concerning its number of workers. Specifically, the petitioner's website states that it employs "over 30 employees" while the letter in the record dated January 8, 2008 states that the petitioner employs "over 150 employees."[2] The NDI requested financial documents to demonstrate the number of workers employed by the petitioner and financial documents pursuant to 8 C.F.R. § 204.5(g)(2) that would evidence its ability to pay the proffered wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of*

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[2] The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

*Ho*, 19 I & N Dec. 582, 586 (BIA 1988). The NDI also requested information about any other workers sponsored by the petitioner to establish its ability to pay for all sponsored workers.

In addition to the issue arising concerning the petitioner's ability to pay the proffered wage, the NDI noted that the job location for the position offered was not clear as a different address was provided on the Form I-140 and the Form ETA 750. A labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(c)(2). It is unclear that the petitioner intends to employ the beneficiary at the location specified on the Form ETA 750. *See Sunoco Energy Development Company*, 17 I&N Dec. 283 (Reg'l Comm'r 1979) (related to a change of area of intended employment). The NDI requested evidence to resolve the discrepancy.

Finally, the NDI requested information concerning the beneficiary's education. Specifically, the Form ETA 750 states that the position requires an MBA degree in Finance. The beneficiary's MBA degree from American International College that was submitted did not specify a concentration. The NDI requested transcripts or other evidence to demonstrate that the beneficiary's degree was in finance.

This office allowed the petitioner 30 days in which to provide evidence to resolve the discrepancy described above and to submit evidence addressing the above issues. More than 30 days have passed and the petitioner has failed to respond to this office's request for financial documents and evidence concerning the beneficiary's qualifications for the position. Thus, the appeal will be dismissed as abandoned.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.